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APPALACHIAN MOUNTAIN ADVOCATES

Great Horned Owl © Estate of Roger Tory Peterson.

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February 6, 2015

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President or Manager
Powell Mountain Energy, LLC
1762 Bonny Blue Rd.
St. Charles, VA 24282

By Certified Mail Return Receipt Requested

Re: 60-Day Notice of Intent to File Citizens' Suit Under Clean Water Act Section 505(a)(1) for Violations of Section 301 of the Act.

The Sierra Club, Appalachian Voices, and Southern Appalachian Mountain Stewards (collectively "the Groups"), in accordance with section 505 of the Clean Water Act (the "Act" or the "CWA"), 33 U.S.C. § 1365, 40 C.F.R. Part 135, hereby notify you that Powell Mountain Energy, LLC ("Powell Mountain") has violated and continues to violate "an effluent standard or limitation" under Sections 301(a) and 505(a)(1)(A) of the CWA, 33 U.S.C §§ 1311(a), 1365(a)(1)(A). Powell Mountain committed the violations by discharging the pollutant Total Dissolved Solids (TDS) from the Mayflower Complex in Lee County, Virginia in excess of the Waste Load Allocations (WLAs) issued pursuant to the Total Maximum Daily Load (TMDL) developed for the Straight Creek watershed. Powell Mountain's discharges of TDS are governed by Virginia joint Coal Surface Mining Operation ("CSMO")/National Pollutant Discharge Elimination System ("NPDES") Permit 1402024/0082024, which makes the WLAs enforceable permit conditions. Each exceedance of a WLA for the Straight Creek watershed is therefore a violation of Powell Mountain's associated CSMO/NPDES permit and is actionable under Section 505(a)(1)(A) of the CWA. A violation of an annual WLA constitutes a permit violation by Powell Mountain on every day of that year. See e.g., Chesapeake Bay Found., Inc. v. Gwaltney of Smithfield, Ltd. 791 F.2d 304 313-315 (4th Cir. 1986), vac'd on other grounds, 484 U.S. 49 (1987).

If within sixty days of the postmark of this letter Powell Mountain does not bring its discharges into full compliance with the terms of its CSMO/NPDES permit, we intend to file a citizen suit seeking civil penalties for Powell Mountain's ongoing violation and an injunction compelling Powell Mountain to comply with the Act.

I. Straight Creek TMDL

On June 8, 2006, the U.S. Environmental Protection Agency approved Virginia's TMDL for Straight Creek and its tributaries in accordance with CWA Section 303(d), 33 U.S.C. § 1313(d), and 40 C.F.R. § 130.7. The TMDL was required by the CWA because Straight Creek

and its tributaries, including Bailey's Trace and Gin Creek, are impaired, *i.e.*, do not adequately support the aquatic life use (general standard – benthic), as determined by failing scores on the Virginia Stream Condition Index (VASCI). Maptech, Inc. *Fecal Bacteria and General Standard Total Maximum Daily Load Development for Straight Creek* (March 29, 2006). TDS was identified as one of the primary stressors causing the impairment. *Id.* at 7-43; Maptech Inc., *General Standard (Benthic) Total Maximum Daily Load Development for the Powell River Tributaries (Straight Creek Tributaries, Virginia, including Ely Creek, Stone Creek, Puckett Creek, Lick Branch, Bailey's Trace, and Gin Creek)* (October 26, 2009) at 7-36.

The TMDL addresses Straight Creek and its tributaries' aquatic impairment by setting numeric load allocations (LAs) for non-point source discharges and wasteload allocations (WLAs) for point source discharges of TDS. WLAs are derived from the total available pollutant load in a watershed and prescribe the maximum amount of a pollutant that a point source or group of point sources can discharge over a given period of time consistent with the TMDL. WLAs "constitute a type of water quality-based effluent limitation." 40 C.F.R. § 130.2. The Straight Creek TMDL assigns a "transient" load for TDS that applies to "all permitted sources" of TDS in the watershed. This "transient" load is a cumulative load shared among outfalls with sediment control structures that will eventually be removed upon reclamation of the facility. The TMDL sets the transient load for all sources at 1.80E+5 kg/year, or 180,000 kg/year.

Although this transient load is a combined load for all transient structures in the watershed, Powell Mountain exceeded this limit *by itself* as a result of discharges from outfalls on Permit 1402024/0082024 in each of the last five one-year periods for which monitoring information is available. The following chart shows the total loads discharged from all outfalls on Permit 1402024/0082024 for each of those periods, which run from the fourth quarter of one year through the third quarter of the following year, *i.e.*, from October through the following September.[1]

Period	Annual Load from 1402024 alone (kg)	Total Annual Watershed Load Allocation (kg)
4Q2013 - 3Q2014	312,216.8151	180,000
4Q2012 - 3Q2013	273,579.6614	180,000
4Q2011 - 3Q2012	468,594.0902	180,000
4Q2010 - 3Q2011	474,395.898	180,000
4Q2009 - 3Q2010	745,436.2968	180,000

II. WLAs Are Enforceable Pursuant to Powell Mountain's Joint CSMO/NPDES Permit

The Clean Water Act requires that all NPDES permits be "consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared

[1] See attached Exhibit A for charts showing individual calculations for all outfalls on Permit 1402024/0082024.

by the State and approved by EPA pursuant to 40 C.F.R. 130.7." 40 C.F.R. § 122.44(d)(1)(vii)(B). Thus, NPDES permits covering discharges subject to a WLA must include conditions that will ensure compliance with the WLAs.

In Virginia, the Division of Mined Land Reclamation ("DMLR") in the Department of Mines, Minerals, and Energy ("DMME") makes WLAs directly enforceable permit conditions of its joint CSMO/NPDES permits for dischargers subject to a TMDL. In fact, the DMLR has a standard "NPDES Permit Conditions" document, modified on January 3, 2003. *See* Exhibit B, attached. This standard permit conditions document contains a condition which mandates that "the discharge of any pollutant(s) from this facility that enters into a water body with an existing and approved Total Maximum Daily Load (TMDL) must be made in compliance with the TMDL and any applicable TMDL implementation plan." The NPDES Permit Conditions document is a part of permit 1402024/0082024.

A permittee's compliance with its WLA can be determined by multiplying the concentration of the subject pollutant in the permittee's effluent by rate of flow from its outfalls and the amount of time represented by the sample. The amounts represented by each sample are then added together to determine the amount of the pollutant discharged. The concentration and flow data come from the permittee's Discharge Monitoring Reports (DMRs). This procedure is described in more detail in newer NPDES permits. *See, e.g.,* attached Exhibit C. All calculations performed to support this notice are included in the attached Exhibit A.

As a result of the discharges listed in Section I, above, Powell Mountain is in violation of effluent limitations in its Joint CSMO/NPDES Permit 1402024/0082024. Discharges authorized under the permit violated the annual TDS load in the last five annual periods for which discharge monitoring reports are available through the Virginia DMME. Each of these violations is a violation of Powell Mountain's permit as well as the Act.

III. Conclusion

As described above, Powell Mountain has discharged pollutants in violation of load allocations for TDS in each of the past five one-year periods. Those discharges violate the terms of its permits and Section 301(a) of the CWA, 33 U.S.C. § 1311(a). In the absence of evidence of remedial steps taken to eliminate the violations described above, we assume that they are ongoing. If Powell Mountain does not cease these violations we intend to bring a citizen suit against it under Section 505(a)(1) of the Clean Water Act, 33 U.S.C. § 1365(a)(1), seeking civil penalties and injunctive relief to enforce the Act. The Groups hereby give notice of their intention to sue for ongoing violations of the same type that occur after the violations outlined in the notice letter. *See Public Interest Research Group of N.J., Inc. v. Hercules, Inc.* 50 F.3d 1239 (3d Cir. 1995).

We encourage Powell Mountain to contact us if it believes anything in this letter is inaccurate or if it has taken any remedial action to abate the violations described above. If Powell Mountain does not advise us of any remedial steps during the 60-day period, we will assume that no such steps have been taken and that violations are likely to continue. We would

be happy to meet with Powell Mountain, or its representative, to attempt to resolve these claims within the 60-day notice period.

Sincerely,

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Via Certified Mail

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CT Corporation System
4701 Cox Rd., Suite 285
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Annual TDS Load (kg) for Powell Mountain Energy, LLC Permit 1402024/0082024						
	MPID					
Loading Period	00000059	1070262	1085587	1085591	1085592	Total
4Q2013 - 3Q2014	2574.57455	761.11975	204733.7463	104147.3745	0	**312216.8151**
4Q2012 - 3Q2013	5256.3506	1538.45325	141306.9188	125079.3258	398.613	**273579.6614**
4Q2011 - 3Q2012	11158.3845	17545.93165	309459.0115	118277.535	12153.2275	**468594.0902**
4Q2010 - 3Q2011	17770.7823	60383.5802	195054.8188	193325.5986	7861.11815	**474395.898**
4Q2009 - 3Q2010	3948.3615	53432.454	582632.4135	76952.93289	28470.13488	**745436.2968**

MPID	Date Sampled	Flow (GPM)	TDS (mg/L)	Days Represented	Conversion Factor	Period Load (kg)	Annual Load (kg)
0000059	8/22/2014	10	312	15.5	0.00545	263.562	**4Q2013 - 3Q2014**
0000059	7/22/2014	5	246	15.5	0.00545	103.90425	2574.57455
0000059	6/12/2014	5	382	15	0.00545	156.1425	
0000059	5/20/2014	3	326	15.5	0.00545	82.61655	
0000059	3/20/2014	5	318	15.5	0.00545	134.31525	
0000059	3/11/2014	5	296	15.5	0.00545	125.023	
0000059	1/20/2014	10	240	15.5	0.00545	202.74	
0000059	1/9/2014	20	286	15.5	0.00545	483.197	
0000059	12/13/2013	25	266	15.5	0.00545	561.75875	
0000059	12/3/2013	5	438	15.5	0.00545	185.00025	
0000059	11/18/2013	10	338	15	0.00545	276.315	
0000059	8/20/2013	3	352	15.5	0.00545	89.2056	**4Q2012 - 3Q2013**
0000059	8/3/2013	3	306	15.5	0.00545	77.54805	5256.3506
0000059	7/17/2013	10	250	15.5	0.00545	211.1875	
0000059	7/10/2013	15	248	15.5	0.00545	314.247	
0000059	6/21/2013	10	274	15	0.00545	223.995	
0000059	6/14/2013	15	306	15	0.00545	375.2325	
0000059	5/15/2013	8	274	15.5	0.00545	185.1692	
0000059	5/3/2013	10	268	15.5	0.00545	226.393	
0000059	4/8/2013	5	276	15	0.00545	112.815	
0000059	4/1/2013	20	298	15	0.00545	487.23	
0000059	3/22/2013	5	284	15.5	0.00545	119.9545	
0000059	3/15/2013	10	282	15.5	0.00545	238.2195	
0000059	2/12/2013	5	292	14	0.00545	111.398	
0000059	2/5/2013	10	386	14	0.00545	294.518	
0000059	1/9/2013	5	288	15.5	0.00545	121.644	
0000059	1/2/2013	10	382	15.5	0.00545	322.6945	
0000059	12/14/2012	5	382	15.5	0.00545	161.34725	
0000059	11/14/2012	5	420	15	0.00545	171.675	
0000059	11/7/2012	20	382	15	0.00545	624.57	
0000059	10/9/2012	5	344	15.5	0.00545	145.297	
0000059	10/2/2012	25	304	15.5	0.00545	642.01	
0000059	9/14/2012	1	488	15	0.00545	39.894	**4Q2011 - 3Q2012**
0000059	9/5/2012	10	400	15	0.00545	327	11158.3845
0000059	8/21/2012	5	246	15.5	0.00545	103.90425	
0000059	8/9/2012	25	328	15.5	0.00545	692.695	
0000059	7/17/2012	10	300	15.5	0.00545	253.425	
0000059	7/9/2012	10	372	15.5	0.00545	314.247	
0000059	6/14/2012	3	352	15	0.00545	86.328	

0000059	6/8/2012	10	324	15	0.00545	264.87	
0000059	5/15/2012	10	250	15.5	0.00545	211.1875	
0000059	5/4/2012	25	368	15.5	0.00545	777.17	
0000059	4/12/2012	5	368	15	0.00545	150.42	
0000059	4/5/2012	15	334	15	0.00545	409.5675	
0000059	3/16/2012	40	284	15.5	0.00545	959.636	
0000059	3/2/2012	55	222	15.5	0.00545	1031.43975	
0000059	2/13/2012	5	314	14.5	0.00545	124.06925	
0000059	2/3/2012	5	222	14.5	0.00545	87.71775	
0000059	1/27/2012	40	242	15.5	0.00545	817.718	
0000059	1/12/2012	30	284	15.5	0.00545	719.727	
0000059	12/16/2011	45	274	15.5	0.00545	1041.57675	
0000059	12/8/2011	60	324	15.5	0.00545	1642.194	
0000059	11/14/2011	5	480	15	0.00545	196.2	
0000059	11/4/2011	10	398	15	0.00545	325.365	
0000059	10/17/2011	10	368	15.5	0.00545	310.868	
0000059	10/6/2011	5	642	15.5	0.00545	271.16475	
0000059	9/15/2011	10	366	15	0.00545	299.205	**4Q2010 - 3Q2011**
0000059	9/6/2011	35	328	15	0.00545	938.49	17770.7823
0000059	8/16/2011	7	444	15.5	0.00545	262.5483	
0000059	8/4/2011	2	558	15.5	0.00545	94.2741	
0000059	7/27/2011	8	458	15.5	0.00545	309.5164	
0000059	7/20/2011	2	660	15.5	0.00545	111.507	
0000059	6/21/2011	15	464	15	0.00545	568.98	
0000059	6/7/2011	15	638	15	0.00545	782.3475	
0000059	5/25/2011	115	418	15.5	0.00545	4060.71325	
0000059	5/6/2011	30	348	15.5	0.00545	881.919	
0000059	4/25/2011	10	340	15	0.00545	277.95	
0000059	4/12/2011	85	258	15	0.00545	1792.7775	
0000059	3/25/2011	35	342	15.5	0.00545	1011.16575	
0000059	3/8/2011	40	282	15.5	0.00545	952.878	
0000059	2/22/2011	5	586	14	0.00545	223.559	
0000059	2/15/2011	10	512	14	0.00545	390.656	
0000059	1/27/2011	15	438	15.5	0.00545	555.00075	
0000059	1/7/2011	35	534	15.5	0.00545	1578.83775	
0000059	12/17/2010	30	356	15.5	0.00545	902.193	
0000059	12/2/2010	15	438	15.5	0.00545	555.00075	
0000059	11/22/2010	4	674	15	0.00545	220.398	
0000059	11/4/2010	10	688	15	0.00545	562.44	
0000059	10/12/2010	5	1038	15.5	0.00545	438.42525	

0000059	5/7/2010	15	830	15.5	0.00545	1051.71375	**4Q2009 - 3Q2010**
0000059	12/8/2009	20	632	15.5	0.00545	1067.764	3948.3615
0000059	10/15/2009	25	866	15.5	0.00545	1828.88375	

MPID	Date Sampled	Flow (GPM)	TDS (mg/L)	Days Represented	Conversion Factor	Period Load (kg)	Annual Load (kg)
1070262	8/22/2014	15	230	15.5	0.00545	291.43875	**4Q 2013 - 3Q 2014**
1070262	5/20/2014	10	362	15.5	0.00545	305.7995	761.11975
1070262	3/11/2014	5	388	15.5	0.00545	163.8815	
1070262	4/1/2013	5	372	15	0.00545	152.055	**4Q 2012 - 3Q 2013**
1070262	3/22/2013	5	342	15.5	0.00545	144.45225	1538.45325
1070262	3/15/2013	5	982	15.5	0.00545	414.77225	
1070262	1/2/2013	5	292	15.5	0.00545	123.3335	
1070262	11/14/2012	5	292	15	0.00545	119.355	
1070262	11/7/2012	5	316	15	0.00545	129.165	
1070262	10/9/2012	5	250	15.5	0.00545	105.59375	
1070262	10/2/2012	15	276	15.5	0.00545	349.7265	
1070262	7/18/2012	70	336	15.5	0.00545	1986.852	**4Q 2011 - 3Q 2012**
1070262	7/9/2012	15	360	15.5	0.00545	456.165	17545.93165
1070262	6/15/2012	2	324	15	0.00545	52.974	
1070262	5/15/2012	75	334	15.5	0.00545	2116.09875	
1070262	5/7/2012	2	412	15.5	0.00545	69.6074	
1070262	4/12/2012	10	398	15	0.00545	325.365	
1070262	4/4/2012	10	414	15	0.00545	338.445	
1070262	3/16/2012	70	378	15.5	0.00545	2235.2085	
1070262	3/2/2012	50	376	15.5	0.00545	1588.13	
1070262	2/13/2012	5	380	14.5	0.00545	150.1475	
1070262	2/3/2012	10	354	14.5	0.00545	279.7485	
1070262	1/27/2012	50	324	15.5	0.00545	1368.495	
1070262	1/12/2012	105	352	15.5	0.00545	3122.196	
1070262	12/15/2011	20	328	15.5	0.00545	554.156	
1070262	12/8/2011	65	308	15.5	0.00545	1691.1895	
1070262	11/14/2011	5	388	15	0.00545	158.595	
1070262	11/4/2011	35	310	15	0.00545	886.9875	
1070262	10/18/2011	5	318	15.5	0.00545	134.31525	
1070262	10/6/2011	1	370	15.5	0.00545	31.25575	
1070262	9/6/2011	20	268	15	0.00545	438.18	**4Q 2010 - 3Q 2011**

1070262	8/16/2011	1	312	15.5	0.00545	26.3562	60383.5802
1070262	7/27/2011	2	440	15.5	0.00545	74.338	
1070262	7/20/2011	15	512	15.5	0.00545	648.768	
1070262	6/21/2011	75	354	15	0.00545	2170.4625	
1070262	6/7/2011	60	820	15	0.00545	4022.1	
1070262	5/25/2011	75	736	15.5	0.00545	4663.02	
1070262	5/6/2011	60	568	15.5	0.00545	2878.908	
1070262	4/25/2011	90	544	15	0.00545	4002.48	
1070262	4/12/2011	165	496	15	0.00545	6690.42	
1070262	3/25/2011	75	734	15.5	0.00545	4650.34875	
1070262	3/8/2011	60	598	15.5	0.00545	3030.963	
1070262	2/22/2011	35	784	14	0.00545	2093.672	
1070262	2/15/2011	30	844	14	0.00545	1931.916	
1070262	1/27/2011	40	854	15.5	0.00545	2885.666	
1070262	1/7/2011	25	730	15.5	0.00545	1541.66875	
1070262	12/17/2010	25	636	15.5	0.00545	1343.1525	
1070262	12/2/2010	35	668	15.5	0.00545	1975.0255	
1070262	11/22/2010	20	902	15	0.00545	1474.77	
1070262	11/4/2010	50	960	15	0.00545	3924	
1070262	10/22/2010	35	1064	15.5	0.00545	3145.849	
1070262	10/12/2010	80	1002	15.5	0.00545	6771.516	
1070262	9/17/2010	45	976	15	0.00545	3590.46	**4Q 2009 - 3Q 2010**
1070262	9/7/2010	65	994	15	0.00545	5281.8675	53432.454
1070262	8/23/2010	40	338	15.5	0.00545	1142.102	
1070262	7/21/2010	75	888	15.5	0.00545	5626.035	
1070262	6/7/2010	35	858	15	0.00545	2454.9525	
1070262	5/25/2010	15	858	15.5	0.00545	1087.19325	
1070262	5/7/2010	60	644	15.5	0.00545	3264.114	
1070262	4/26/2010	50	768	15	0.00545	3139.2	
1070262	4/2/2010	25	760	15	0.00545	1553.25	
1070262	3/22/2010	40	602	15.5	0.00545	2034.158	
1070262	3/3/2010	25	738	15.5	0.00545	1558.56375	

1070262	2/12/2010	40	542	14	0.00545	1654.184
1070262	2/1/2010	45	504	14	0.00545	1730.484
1070262	1/12/2010	50	922	15.5	0.00545	3894.2975
1070262	1/5/2010	40	606	15.5	0.00545	2047.674
1070262	12/23/2009	40	560	15.5	0.00545	1892.24
1070262	12/8/2009	30	1024	15.5	0.00545	2595.072
1070262	11/18/2009	25	962	15	0.00545	1966.0875
1070262	11/4/2009	30	988	15	0.00545	2423.07
1070262	10/15/2009	40	876	15.5	0.00545	2960.004
1070262	10/5/2009	25	728	15.5	0.00545	1537.445

MPID	Date Sampled	Flow (GPM)	TDS (mg/L)	Days Represented	Conversion Factor	Period Load (kg)	Annual Load (kg)
1085587	9/23/2014	125	1084	15	0.00545	11077.125	**4Q 2013 - 3Q 2014**
1085587	9/11/2014	100	1046	15	0.00545	8551.05	204733.7463
1085587	8/22/2014	150	850	15.5	0.00545	10770.5625	
1085587	8/5/2014	100	872	15.5	0.00545	7366.22	
1085587	7/22/2014	75	476	15.5	0.00545	3015.7575	
1085587	7/8/2014	100	994	15.5	0.00545	8396.815	
1085587	6/19/2014	100	978	15	0.00545	7995.15	
1085587	6/12/2014	125	958	15	0.00545	9789.5625	
1085587	5/20/2014	100	800	15.5	0.00545	6758	
1085587	5/8/2014	100	990	15.5	0.00545	8363.025	
1085587	4/23/2014	125	962	15	0.00545	9830.4375	
1085587	4/11/2014	125	870	15	0.00545	8890.3125	
1085587	3/20/2014	125	1074	15.5	0.00545	11340.76875	
1085587	3/11/2014	150	1000	15.5	0.00545	12671.25	
1085587	2/25/2014	125	806	14	0.00545	7687.225	
1085587	2/11/2014	150	992	14	0.00545	11353.44	
1085587	1/20/2014	175	1004	15.5	0.00545	14842.2575	
1085587	1/9/2014	150	894	15.5	0.00545	11328.0975	
1085587	12/13/2013	125	540	15.5	0.00545	5702.0625	
1085587	12/3/2013	100	962	15.5	0.00545	8126.495	
1085587	11/18/2013	75	1124	15	0.00545	6891.525	
1085587	11/6/2013	50	1134	15	0.00545	4635.225	
1085587	10/10/2013	50	1116	15.5	0.00545	4713.705	
1085587	10/3/2013	50	1098	15.5	0.00545	4637.6775	
1085587	9/12/2013	45	1082	15	0.00545	3980.4075	**4Q 2012 - 3Q 2013**
1085587	9/5/2013	50	1064	15	0.00545	4349.1	141306.9188
1085587	8/20/2013	50	1102	15.5	0.00545	4654.5725	
1085587	8/3/2013	40	1084	15.5	0.00545	3662.836	
1085587	7/17/2013	45	890	15.5	0.00545	3383.22375	
1085587	7/10/2013	50	792	15.5	0.00545	3345.21	
1085587	6/21/2013	50	958	15	0.00545	3915.825	

1085587	6/14/2013	75	972	15	0.00545	5959.575		
1085587	5/15/2013	50	1104	15.5	0.00545	4663.02		
1085587	5/3/2013	50	1116	15.5	0.00545	4713.705		
1085587	4/8/2013	50	1112	15	0.00545	4545.3		
1085587	4/1/2013	75	1066	15	0.00545	6535.9125		
1085587	3/22/2013	20	992	15.5	0.00545	1675.984		
1085587	3/15/2013	75	1048	15.5	0.00545	6639.735		
1085587	2/12/2013	75	1396	14	0.00545	7988.61		
1085587	2/5/2013	100	1222	14	0.00545	9323.86		
1085587	1/9/2013	100	912	15.5	0.00545	7704.12		
1085587	1/2/2013	100	678	15.5	0.00545	5727.405		
1085587	12/14/2012	100	1056	15.5	0.00545	8920.56		
1085587	12/5/2012	50	1202	15.5	0.00545	5076.9475		
1085587	11/14/2012	100	1032	15	0.00545	8436.6		
1085587	11/7/2012	100	924	15	0.00545	7553.7		
1085587	10/9/2012	100	1196	15.5	0.00545	10103.21		
1085587	10/2/2012	100	1000	15.5	0.00545	8447.5		
1085587	9/14/2012	50	1382	15	0.00545	5648.925	**4Q 2011 - 3Q 2012**	
1085587	9/5/2012	25	1264	15	0.00545	2583.3		309459.0115
1085587	8/21/2012	25	1132	15.5	0.00545	2390.6425		
1085587	8/9/2012	45	926	15.5	0.00545	3520.07325		
1085587	7/17/2012	75	850	15.5	0.00545	5385.28125		
1085587	7/9/2012	105	1108	15.5	0.00545	9827.8215		
1085587	6/15/2012	110	1024	15	0.00545	9208.32		
1085587	6/8/2012	110	964	15	0.00545	8668.77		
1085587	5/15/2012	150	822	15.5	0.00545	10415.7675		
1085587	5/4/2012	180	1042	15.5	0.00545	15844.131		
1085587	4/12/2012	200	1174	15	0.00545	19194.9		
1085587	4/5/2012	250	1204	15	0.00545	24606.75		
1085587	3/16/2012	500	1066	15.5	0.00545	45025.175		
1085587	3/2/2012	210	890	15.5	0.00545	15788.3775		
1085587	2/13/2012	150	1162	14.5	0.00545	13774.0575		

1085587	2/3/2012	150	1070	14.5	0.00545	12683.5125		
1085587	1/27/2012	105	928	15.5	0.00545	8231.244		
1085587	1/12/2012	160	1056	15.5	0.00545	14272.896		
1085587	12/15/2011	320	1122	15.5	0.00545	30329.904		
1085587	12/8/2011	340	792	15.5	0.00545	22747.428		
1085587	11/14/2011	45	1142	15	0.00545	4201.1325		
1085587	11/3/2011	40	1182	15	0.00545	3865.14		
1085587	10/17/2011	110	1342	15.5	0.00545	12470.1995		
1085587	10/6/2011	70	1484	15.5	0.00545	8775.263		
1085587	9/15/2011	160	1122	15	0.00545	14675.76	**4Q 2010 - 3Q 2011**	
1085587	9/6/2011	130	824	15	0.00545	8757.06		195054.8188
1085587	8/16/2011	65	1120	15.5	0.00545	6149.78		
1085587	8/4/2011	20	692	15.5	0.00545	1169.134		
1085587	7/27/2011	55	532	15.5	0.00545	2471.7385		
1085587	7/20/2011	110	554	15.5	0.00545	5147.9065		
1085587	6/21/2011	80	512	15	0.00545	3348.48		
1085587	6/7/2011	70	526	15	0.00545	3010.035		
1085587	5/6/2011	250	394	15.5	0.00545	8320.7875		
1085587	3/25/2011	5	412	15.5	0.00545	174.0185		
1085587	3/8/2011	85	346	15.5	0.00545	2484.40975		
1085587	2/22/2011	100	1346	14	0.00545	10269.98		
1085587	2/15/2011	115	1284	14	0.00545	11266.458		
1085587	1/27/2011	75	1338	15.5	0.00545	8477.06625		
1085587	1/7/2011	135	1170	15.5	0.00545	13342.82625		
1085587	12/17/2010	300	912	15.5	0.00545	23112.36		
1085587	12/2/2010	130	962	15.5	0.00545	10564.4435		
1085587	11/22/2010	45	1380	15	0.00545	5076.675		
1085587	11/4/2010	90	1244	15	0.00545	9152.73		
1085587	10/22/2010	150	1358	15.5	0.00545	17207.5575		
1085587	10/12/2010	250	1462	15.5	0.00545	30875.6125		
1085587	9/17/2010	165	1386	15	0.00545	18695.4075	**4Q 2009 - 3Q 2010**	
1085587	9/7/2010	180	1228	15	0.00545	18070.02		582632.4135

1085587	8/23/2010	140	1012	15.5	0.00545	11968.418
1085587	8/11/2010	75	1168	15.5	0.00545	7400.01
1085587	7/21/2010	250	858	15.5	0.00545	18119.8875
1085587	7/14/2010	220	504	15.5	0.00545	9366.588
1085587	6/14/2010	250	1206	15	0.00545	24647.625
1085587	6/7/2010	200	1400	15	0.00545	22890
1085587	5/25/2010	150	1354	15.5	0.00545	17156.8725
1085587	5/7/2010	240	604	15.5	0.00545	12245.496
1085587	4/26/2010	400	1082	15	0.00545	35381.4
1085587	4/2/2010	200	980	15	0.00545	16023
1085587	3/22/2010	200	1242	15.5	0.00545	20983.59
1085587	3/3/2010	470	1542	15.5	0.00545	61222.4115
1085587	2/12/2010	350	1362	14	0.00545	36372.21
1085587	2/1/2010	200	1100	14	0.00545	16786
1085587	1/12/2010	300	1632	15.5	0.00545	41358.96
1085587	1/5/2010	300	1490	15.5	0.00545	37760.325
1085587	12/28/2009	300	956	15.5	0.00545	24227.43
1085587	12/8/2009	250	1344	15.5	0.00545	28383.6
1085587	11/18/2009	300	774	15	0.00545	18982.35
1085587	11/4/2009	300	1460	15	0.00545	35806.5
1085587	10/15/2009	300	1288	15.5	0.00545	32641.14
1085587	10/5/2009	150	1274	15.5	0.00545	16143.1725

MPID	Date Sampled	Flow (GPM)	TDS (mg/L)	Days Represented	Conversion Factor	Period Load (kg)	Annual Load (kg)
1085591	9/23/2014	15	1386	15	0.00545	1699.5825	**4Q2013 - 3Q2014**
1085591	9/11/2014	15	1302	15	0.00545	1596.5775	104147.3745
1085591	8/22/2014	40	1184	15.5	0.00545	4000.736	
1085591	8/5/2014	50	1270	15.5	0.00545	5364.1625	
1085591	7/22/2014	50	1004	15.5	0.00545	4240.645	
1085591	7/8/2014	35	1336	15.5	0.00545	3950.051	
1085591	6/19/2014	40	1406	15	0.00545	4597.62	
1085591	6/12/2014	50	1322	15	0.00545	5403.675	
1085591	5/20/2014	50	1270	15.5	0.00545	5364.1625	
1085591	5/8/2014	40	1246	15.5	0.00545	4210.234	
1085591	4/23/2014	50	1404	15	0.00545	5738.85	
1085591	4/11/2014	40	1314	15	0.00545	4296.78	
1085591	3/20/2014	40	1426	15.5	0.00545	4818.454	
1085591	3/11/2014	50	1500	15.5	0.00545	6335.625	
1085591	2/25/2014	50	1398	14	0.00545	5333.37	
1085591	2/11/2014	50	1518	14	0.00545	5791.17	
1085591	1/20/2014	50	1400	15.5	0.00545	5913.25	
1085591	1/9/2014	75	1480	15.5	0.00545	9376.725	
1085591	12/13/2013	50	1290	15.5	0.00545	5448.6375	
1085591	12/3/2013	25	1256	15.5	0.00545	2652.515	
1085591	11/18/2013	20	1276	15	0.00545	2086.26	
1085591	11/6/2013	10	1556	15	0.00545	1272.03	
1085591	10/10/2013	15	1624	15.5	0.00545	2057.811	
1085591	10/3/2013	20	1538	15.5	0.00545	2598.451	
1085591	9/12/2013	25	1452	15	0.00545	2967.525	**4Q2012 - 3Q2013**
1085591	9/5/2013	30	1446	15	0.00545	3546.315	125079.3258
1085591	8/20/2013	35	1352	15.5	0.00545	3997.357	
1085591	8/3/2013	25	1466	15.5	0.00545	3096.00875	
1085591	7/18/2013	35	1484	15.5	0.00545	4387.6315	
1085591	7/11/2013	30	998	15.5	0.00545	2529.1815	
1085591	6/21/2013	30	1232	15	0.00545	3021.48	

1085591	6/14/2013	35	1196	15	0.00545	3422.055		
1085591	5/15/2013	25	1388	15.5	0.00545	2931.2825		
1085591	5/3/2013	25	1430	15.5	0.00545	3019.98125		
1085591	4/8/2013	25	1494	15	0.00545	3053.3625		
1085591	4/1/2013	50	1448	15	0.00545	5918.7		
1085591	3/22/2013	20	1456	15.5	0.00545	2459.912		
1085591	3/15/2013	50	1618	15.5	0.00545	6834.0275		
1085591	2/12/2013	20	1740	14	0.00545	2655.24		
1085591	2/5/2013	25	1830	14	0.00545	3490.725		
1085591	1/9/2013	75	1714	15.5	0.00545	10859.26125		
1085591	1/2/2013	75	1552	15.5	0.00545	9832.89		
1085591	12/14/2012	75	1442	15.5	0.00545	9135.97125		
1085591	12/5/2012	50	1558	15.5	0.00545	6580.6025		
1085591	11/14/2012	50	1426	15	0.00545	5828.775		
1085591	11/7/2012	100	1248	15	0.00545	10202.4		
1085591	10/9/2012	100	1346	15.5	0.00545	11370.335		
1085591	10/2/2012	75	1090	15.5	0.00545	6905.83125		
1085591	9/14/2012	25	1752	15	0.00545	3580.65	**4Q2011 - 3Q2012**	
1085591	9/6/2012	25	1502	15	0.00545	3069.7125	118277.535	
1085591	8/23/2012	20	1474	15.5	0.00545	2490.323		
1085591	8/9/2012	15	1262	15.5	0.00545	1599.11175		
1085591	7/17/2012	15	1140	15.5	0.00545	1444.5225		
1085591	7/9/2012	10	1560	15.5	0.00545	1317.81		
1085591	6/18/2012	2	1564	15	0.00545	255.714		
1085591	6/8/2012	10	1330	15	0.00545	1087.275		
1085591	5/15/2012	15	1058	15.5	0.00545	1340.61825		
1085591	5/4/2012	70	1290	15.5	0.00545	7628.0925		
1085591	4/12/2012	70	1514	15	0.00545	8663.865		
1085591	4/5/2012	80	1446	15	0.00545	9456.84		
1085591	3/16/2012	110	1490	15.5	0.00545	13845.4525		
1085591	3/2/2012	125	864	15.5	0.00545	9123.3		
1085591	2/13/2012	30	1670	14.5	0.00545	3959.1525		

1085591	2/3/2012	75	1772	14.5	0.00545	10502.4225		
1085591	1/27/2012	55	1352	15.5	0.00545	6281.561		
1085591	1/12/2012	75	1228	15.5	0.00545	7780.1475		
1085591	12/15/2011	60	1758	15.5	0.00545	8910.423		
1085591	12/8/2011	70	1244	15.5	0.00545	7356.083		
1085591	11/14/2011	30	1514	15	0.00545	3713.085		
1085591	11/3/2011	10	1530	15	0.00545	1250.775		
1085591	10/17/2011	10	1610	15.5	0.00545	1360.0475		
1085591	10/6/2011	15	1784	15.5	0.00545	2260.551		
1085591	9/15/2011	20	1468	15	0.00545	2400.18	**4Q2010 - 3Q2011**	
1085591	9/6/2011	60	990	15	0.00545	4855.95	193325.5986	
1085591	8/16/2011	35	1326	15.5	0.00545	3920.48475		
1085591	8/4/2011	85	1688	15.5	0.00545	12120.473		
1085591	7/27/2011	85	1202	15.5	0.00545	8630.81075		
1085591	7/20/2011	30	1654	15.5	0.00545	4191.6495		
1085591	6/21/2011	75	364	15	0.00545	2231.775		
1085591	6/7/2011	105	1774	15	0.00545	15227.5725		
1085591	5/25/2011	115	1596	15.5	0.00545	15504.5415		
1085591	5/6/2011	275	1856	15.5	0.00545	43116.04		
1085591	4/25/2011	110	1936	15	0.00545	17409.48		
1085591	4/12/2011	140	1518	15	0.00545	17373.51		
1085591	3/25/2011	80	2026	15.5	0.00545	13691.708		
1085591	3/8/2011	75	1736	15.5	0.00545	10998.645		
1085591	2/28/2011	10	1408	9.33	0.00545	715.94688		
1085591	2/23/2011	10	2102	9.33	0.00545	1068.83547		
1085591	2/15/2011	15	2018	9.33	0.00545	1539.184095		
1085591	1/27/2011	35	1892	15.5	0.00545	5593.9345		
1085591	1/7/2011	35	1878	15.5	0.00545	5552.54175		
1085591	12/20/2010	15	1552	10.33	0.00545	1310.62908		
1085591	12/17/2010	40	984	10.33	0.00545	2215.90896		
1085591	12/2/2010	15	1028	10.33	0.00545	868.12287		
1085591	11/22/2010	10	1800	15	0.00545	1471.5		

1085591	11/4/2010	10	1610	15	0.00545	1316.175		
1085591	8/23/2010	25	1050	15.5	0.00545	2217.46875	**4Q2009 - 3Q2010**	
1085591	7/21/2010	50	1462	15.5	0.00545	6175.1225		76952.93289
1085591	7/14/2010	8	1828	15.5	0.00545	1235.3624		
1085591	6/14/2010	15	1064	15	0.00545	1304.73		
1085591	6/7/2010	25	822	15	0.00545	1679.9625		
1085591	5/25/2010	30	850	15.5	0.00545	2154.1125		
1085591	5/7/2010	25	1700	15.5	0.00545	3590.1875		
1085591	4/26/2010	55	738	15	0.00545	3318.2325		
1085591	4/2/2010	25	1864	15	0.00545	3809.55		
1085591	3/22/2010	40	1240	15.5	0.00545	4189.96		
1085591	3/3/2010	30	2224	15.5	0.00545	5636.172		
1085591	2/12/2010	50	1036	14	0.00545	3952.34		
1085591	2/1/2010	55	462	14	0.00545	1938.783		
1085591	1/12/2010	35	848	15.5	0.00545	2507.218		
1085591	1/5/2010	50	2178	15.5	0.00545	9199.3275		
1085591	12/28/2009	50	518	10.33	0.00545	1458.13115		
1085591	12/23/2009	30	850	10.33	0.00545	1435.61175		
1085591	12/8/2009	35	1184	10.33	0.00545	2333.00984		
1085591	11/21/2009	35	1278	15	0.00545	3656.6775		
1085591	11/4/2009	35	1388	15	0.00545	3971.415		
1085591	10/15/2009	65	1268	15.5	0.00545	6962.4295		
1085591	10/5/2009	30	1668	15.5	0.00545	4227.129		

MPID	Date Sampled	Flow (GPM)	TDS (mg/L)	Days Represented	Conversion Factor	Period Load (kg)	Annual Load (kg)
1085592	4/1/2013	5	318	15	0.00545	129.9825	**4Q2012 - 3Q2013**
1085592	3/19/2013	10	318	15.5	0.00545	268.6305	398.613
1085592	7/18/2012	100	386	15.5	0.00545	3260.735	**4Q2011 - 3Q2012**
1085592	3/16/2012	115	400	15.5	0.00545	3885.85	12153.2275
1085592	3/2/2012	20	304	15.5	0.00545	513.608	
1085592	2/3/2012	5	410	14.5	0.00545	162.00125	
1085592	1/19/2012	10	420	15.5	0.00545	354.795	
1085592	1/12/2012	65	450	15.5	0.00545	2470.89375	
1085592	12/8/2011	55	324	15.5	0.00545	1505.3445	
1085592	6/21/2011	10	384	15	0.00545	313.92	**4Q2010 - 3Q2011**
1085592	5/25/2011	35	420	15.5	0.00545	1241.7825	7861.11815
1085592	5/6/2011	40	508	15.5	0.00545	1716.532	
1085592	4/25/2011	35	366	15	0.00545	1047.2175	
1085592	3/8/2011	30	350	15.5	0.00545	886.9875	
1085592	2/22/2011	1	398	14	0.00545	30.3674	
1085592	1/27/2011	5	422	15.5	0.00545	178.24225	
1085592	1/7/2011	20	442	15.5	0.00545	746.759	
1085592	12/17/2010	25	320	15.5	0.00545	675.8	
1085592	12/2/2010	15	320	15.5	0.00545	405.48	
1085592	11/4/2010	20	378	15	0.00545	618.03	
1085592	8/23/2010	35	328	15.5	0.00545	969.773	**4Q2019 - 3Q2010**
1085592	8/11/2010	10	350	15.5	0.00545	295.6625	28470.13488
1085592	7/21/2010	65	314	15.5	0.00545	1724.13475	
1085592	7/14/2010	35	374	15.5	0.00545	1105.77775	
1085592	5/25/2010	5	424	15.5	0.00545	179.087	
1085592	4/26/2010	75	810	15	0.00545	4966.3125	
1085592	4/2/2010	40	414	15	0.00545	1353.78	
1085592	3/24/2010		402	10.33	0.00545	22.631997	
1085592	3/22/2010	35	594	10.33	0.00545	1170.445815	
1085592	3/3/2010	30	704	10.33	0.00545	1189.02432	
1085592	2/12/2010	45	572	14	0.00545	1963.962	
1085592	2/1/2010	30	380	14	0.00545	869.82	
1085592	1/12/2010	10	362	15.5	0.00545	305.7995	
1085592	1/5/2010	55	588	15.5	0.00545	2731.9215	
1085592	12/23/2009	35	340	15.5	0.00545	1005.2525	
1085592	12/8/2009	40	364	15.5	0.00545	1229.956	
1085592	11/18/2009	100	392	15	0.00545	3204.6	
1085592	11/4/2009	15	376	15	0.00545	461.07	
1085592	10/15/2009	65	370	15.5	0.00545	2031.62375	

1085592	10/5/2009	50	400	15.5	0.00545	1689.5

NPDES PERMIT CONDITIONS

Virginia Department of Mines, Minerals, & Energy
Division of Mined Land Reclamation NPDES Permits

DEPARTMENT OF MINES, MINERALS, AND ENERGY
DIVISION OF MINED LAND RECLAMATION

NPDES PERMIT CONDITIONS

(a) DUTY TO COMPLY

The permittee must comply with all conditions of the permit and all applicable requirements of the CWA. Any permit noncompliance constitutes a violation of the Law and the CWA, except that noncompliance with certain provisions of the permit may constitute a violation of the Law but not the CWA. Permit noncompliance is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

(b) DUTY TO REAPPLY

If the permittee wishes to continue an activity regulated by the permit after the expiration date of the permit, the permittee must apply for and obtain a new permit.

(c) NEED TO HALT OR REDUCE NOT A DEFENSE

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.

(d) DUTY TO MITIGATE

The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of the permit, which has a reasonable likelihood of adversely affecting human health or the environment.

(e) PROPER OPERATION AND MAINTENANCE

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of the permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems, which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

(f) PERMIT ACTIONS

Permits may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

(g) PROPERTY RIGHTS

Permits do not convey any property rights of any sort, or any exclusive privilege.

(h) DUTY TO PROVIDE INFORMATION

The permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. The Director may require the permittee to furnish, upon request, such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from his discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of the Law. The permittee shall also furnish to the Director upon request, copies of records required to be kept by the permit.

(i) INFORMATION AND ENTRY

The permittee shall allow the Director, or an authorized representative (including an authorized contractor acting as a representative of the Administrator), upon presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of the permit;

2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under the permit; and

4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the CWA and the Law, any substances or parameters at any location.

(j) MONITORING AND RECORDS

Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity with monitoring and records conforming to the following:

1. Except for records of monitoring information required by the permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years (or longer as required by Part VI of this regulation), the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by the permit, and records of all data used to complete the application for the permit, for a period of at least 3 years from the date of the sample, measurement, report or application. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as requested by the Director at any time.

2. Records of monitoring information shall include:

   (i) The date, exact place, and time of sampling or measurements;

   (ii) The individual(s) who performed the sampling or measurements;

   (iii) The date(s) analyses were performed;

   (iv) The individual(s) who performed the analyses;

(v) The analytical techniques or methods used; and

(vi) The results of such analyses.

3. All discharges from pre-reclamation areas, including discharges of underground mine drainage, shall be sampled two times per calendar month. All discharges from reclamation areas shall be sampled one time per calendar month.

(k) SIGNATORY REQUIREMENTS

All applications, reports, or information submitted to the Director shall be signed and certified. The CWA provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or non-compliance shall upon conviction, be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than six months per violation or by both.

(l) REPORTING REQUIREMENTS

Other reporting requirements are as follows:

1. The permittee shall give notice to the Division as soon as possible of any planned physical alterations or additions to the permitted facility.

2. The permittee shall give advance notice to the Division of any planned changes in the permitted facility or activity that may result in noncompliance with permit requirements.

3. Permits are not transferable to any person except after notice to the Division. The Division may require modification or revocation and reissuance of permits to change the name of the permittee and incorporate such other requirements as may be necessary under the Law or the CWA.

4. Monitoring results shall be reported to the Division on a Discharge Monitoring Report (DMR) within thirty (30) days after the end of the calendar quarter. The DMR will be signed by the company official who is listed as the operator on the application or his designated representative. The representative must be a company employee who is in a position to take responsible action regarding submission of reports, reporting violations, and taking actions to correct violations. If the permittee monitors any pollutant more frequently than required by the permit, using approved test procedures, the results of this monitoring shall be included in the calculation and reporting of the data submitted on the DMR. Calculations for all limitations that require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Director in the permit.

5. Twenty-four hour reporting.

(i) The permittee shall report any noncompliance that may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances.

(ii) The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

(iii) The following shall be included as information that must be reported within 24 hours under this paragraph.

A. Any unanticipated bypass that exceeds any effluent limitation in the permit.

B. Any upset which exceeds any effluent limitation in the permit.

C. Violation of a maximum daily discharge limitation for any of the pollutants listed in the permit to be reported within 24 hours.

(iv) The Director may waive the written report on a case-by-case basis for non-compliances under this condition if the oral report has been received within 24 hours.

(m) WATER QUAILTY MONITORING

The Division may require every owner to furnish such plans, specifications, or other pertinent information as may be necessary to determine the effect of the discharge on the water quality or such information as may be necessary to accomplish the purposes of the CWA. The permittee shall obtain and record such information on the receiving waters as requested by the Division. The information shall be subject to inspection by authorized State and Federal representatives and shall be submitted with such frequency and in such detail as requested by the Division.

(n) MANAGEMENT REQUIREMENTS

1. All discharges authorized by this NPDES permit shall be made in accordance with the terms and conditions of the permit. The Division must be notified at least thirty (30) days prior to all expansions, production increases, or process modifications that will result in new or increased discharge(s) of pollutant. Notification should be by submission of a new NPDES application, or, if such discharge(s) does not violate effluent limitations specified in the permit, by submission to the Division of notice of such new or increased discharge of pollutant(s).

2. The discharge of any pollutant more frequently than, or at a level greater than that identified and authorized by this permit, shall constitute a violation of the terms and conditions of this permit.

3. The discharge of any pollutant(s) from this facility that enters into a water body with an existing and approved Total Maximum Daily Load (TMDL) must be made in compliance with the TMDL and any applicable TMDL implementation plan. If the discharge enters into a water body included on the state's current 303(d) list not having an existing and approved TMDL, the discharge of any pollutant(s) from this facility can not be the cause of the stream's impairment and 303(d) listing.

4. Any permittee or owner proposing a new discharge or new source shall submit an application for a new NPDES permit at least 30 days prior to commencing erection, construction, or expansion or employment of new processes at any facility. Within the 30 day period, the Division may prohibit such commencement until the NPDES permit is issued or revised. In no case, however, shall any discharge from said facility commence prior to issuance of a NPDES permit.

(o) AVAILABILITY OF REPORTS

Except for data determined to be confidential under Section 308 of the Act, all reports prepared in accordance with the terms and conditions of this permit will be available for public inspection at the Division office. As required by the Act, effluent data will not be considered confidential. Knowingly making false statement on any such report may result in the imposition of criminal penalties as provided for in Section 309 of the Act and in Section 62.1-44.32 of the Code of Virginia.

(p) SPECIAL CONDITIONS

1. This permit shall be modified, or alternatively, revoked and reissued, to comply with any applicable effluent standard or limitation issued or approved under Section 301(b)(2)(C) and (D), 304 (b)(2), and 307 (a)(2) of the CWA, if the effluent standard or limitations so issued or approved:

   (i) Contain different conditions or is otherwise more stringent than any effluent limitation in the permit; or

   (ii) Control any pollutant not limited in the permit; or

   (iii) The permit as modified or reissued under this paragraph shall also contain any other requirements of the Act as applicable.

   (iv) Immediately after EPA's promulgation of applicable standards or limitations, a draft permit incorporating the new requirements shall be sent to the permittee.

2. Any and all product, materials, industrial wastes, and/or other wastes resulting from the purchase, sale, mining, extraction, transport, preparation, and/or storage of raw or intermediate materials, final product, by-product or wastes, shall be handled, disposed of, and and/or stored in such a manner so as not to permit discharge of such product, materials, industrial wastes, and/or other wastes to State waters, except as expressly authorized herein.

(q) STATE LAW

1. Compliance with this permit during its term constitutes compliance with the Law and Act except for any standard imposed under Section 307 of the Act for a toxic pollutant injurious to human health.

2. State water quality standards contain an antidegradation policy that is applicable to this permit, facility, and discharge(s). Effluent limitations assigned to this permit require the operator to utilize the best available technology to treat all discharges and to protect water quality. As a condition of this permit, the permittee must take appropriate measures to comply with the antidegradation policy.

3. Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any other State law or regulation or under authority preserved by Section 510 of the Act.

(r) SEVERABILITY

The provisions of this permit are severable, and if any provision of this permit, or application of any provision of this permit to any circumstances, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

(s) TOXIC POLLUTANTS

If a toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is established under Section 307(a) of the Act for a toxic pollutant which is present in the discharge and such standard or prohibition is more stringent than any limitation for such pollutant in

this permit, this permit shall be revoked and reissued or modified in accordance with the toxic effluent standard or prohibition. Any effluent standard or prohibition established under Section 307(a) for a toxic pollutant injurious to human health is effective and enforceable by the time set forth in the promulgated standard, even absent permit modification.

(t) OIL AND HAZARDOUS SUBSTANCE LIABILITY

Nothing in this permit shall be construed to preclude the institution or any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the Act or Sections 62.1-44.34(1) through 62.1-44.34(7) of the Law.

(u) OTHER CONDITIONS

Other conditions may be applicable as required by CFR Section 122.41.

NPDES PERMIT DEFINITIONS

A. The term "acid or ferruginous mine drainage" means mine drainage which, before any treatment, either has a pH of less than 6.0 or a total iron concentration equal to or more than 10 mg/l.

B. The term "active mine drainage' means the area actively being used or disturbed for the extraction, removal, or recovery of coal from its natural deposits. This excludes areas where reclamation and revegetation has been completed.

C. The term "alkaline mine drainage" means mine drainage which, before any treatment, has a pH equal to or more than 6.0 and a total iron concentration less than 10 mg/l.

D. "Application" means the EPA standard national forms for applying for a permit, including any additions or modifications to the forms; or forms approved by EPA for use in approved States, including any approve additions or modifications.

E. "Approved program or approved State" means a State administered NPDES program which has been approved or authorized by EPA under 40 CFR Part 123.

F. "Best management practices" (BMP) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States. BMPs include treatment requirements, operation procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

G. "Coal preparation plant" means a facility where coal is crushed, screened, sized, cleaned, dried, or otherwise prepared and loaded for transit to a consuming facility. "Coal preparation plant associated areas" means the coal preparation plant yards, immediate access roads, coal refuse piles, and coal storage piles and facilities. "Coal preparation plant water circuit means all pipes, channels, basins, tanks, and all other structures and equipment that convey, contain, treat, or process any water that is used in coal preparation processes within a coal preparation plant.

H. The term "commingled discharge" means discharges of drainage from underground workings that are mixed or commingled with surface mine drainage.

I. "Composite sample" means a combination of individual samples of wastewater taken at 1 hour intervals, for eight (8) hours (or for the duration of discharge, whichever is less), to minimize the effect of variability of the individual samples. Individual samples must be of equal volume. (Example: one (1) liter per hour.)

J. The term "controlled discharge" means any surface mine drainage that is pumped or siphoned from the active mining area.

K. "CWA" means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act) Public Law 92-500 as amended by Public Law 95-217, and Public Law 95-576, 33 U.S.C. 1251 et seq.

L. The "daily maximum" discharge means the total mass of a pollutant discharged during the calendar day. Where the pollutant is limited in terms other than mass, the daily maximum shall mean the average concentration or other measurement specified during the calendar day or other specified sampling day.

M. "Discharge (of a pollutant)" means any addition of any pollutant or combination of pollutants to waters of the United States from any point source; or any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.

N. "Existing source or existing discharger (in the NPDES program)" means any source which is not a new source or new discharger.

O. "Effluent limitation" means any restriction imposed by the Director on quantities, discharge rates, and concentrations of pollutants that are discharged from point sources into waters of the United States, the waters of the contiguous zone, or the ocean.

P. "Effluent limitation guideline" means a regulation published by the Administration under Section 304(b) of the CWA to adopt or revise effluent limitations.

Q. "Environmental Protection Agency (EPA)" means the United States Environmental Protection Agency.

R. "Estimate" means to be based on technical evaluation of the sources contributing to the discharge including, but not limited to, pump capabilities, water meters, and batch discharge volumes.

S. "Grab sample" means an individual sample collected in less than 15 minutes.

T. "Measured Flow" means any method of liquid volume measurement the accuracy of which has been previously demonstrated in engineering practices, or for which a relationship to absolute volume has been obtained.

U. "Mine drainage" means any drainage, and any water pumped or siphoned, from an active mining area or a post-mining area. The abbreviation "ml/l" means milliliters per liter.

V. The "monthly average" discharge means the total mass (and concentration if appropriate) of all daily discharges sampled and/or measured properly during a calendar month divided by the number of daily discharges sampled and/or measured properly during such month.

W. The "monthly average" temperature means the arithmetic mean of temperature measurements made on an hourly basis, or mean value plot of the record of a continuous automated temperature recording instrument, either during a calendar month, or during the operating month if flows are of shorter duration.

X. "National Pollutant Discharge Elimination System (NPDES)" means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring, and enforcing permits and imposing and enforcing pretreatment requirements, under Sections 307, 318, 402, and 405 of CWA. The term includes an approved program.

Y. "New discharger" means any building, structure, facility, or installation: (A) From which there is or may be a new or additional discharge of pollutants at a site at which on October 18, 1972, it had never discharged pollutants; (B) Which has never received a finally effective NPDES permit for discharges at that site; and (C) Which is not a "new source". This definition includes an indirect discharger, which commences discharging into waters of the United States. It also includes any existing mobile point source, such as an offshore oil drilling rig, seafood processing vessel, or aggregate plant that begins discharging at a location for which it does not have an existing permit.

Z. "NA" means effluent limitations and monitoring requirements not required.

AA. "NL" means no limitation on the affected parameters, however monitoring is required.

BB. "Outfall" means a point source.

CC. "Permit" means an authorization, license, or equivalent control document issued by EPA or an approved State to implement the requirements of 40 CFR Parts 122, 123, and 124.

DD. "Point source" means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel, or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

EE. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical waste, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. Section 2011 et seq.)), heat wrecked or discarded equipment, rocks, sand, cellar dirt and industrial, municipal, and agriculture waste discharged into water.

FF. The term "post-mining area" means: (1) A reclamation area or (2) the underground workings of an underground coal mine after the extraction, removal, or recovery of coal from its natural deposit has ceased and prior to bond release.

GG. The term "10-year, 24-hour precipitation event" means the maximum 24-hour precipitation event with a probable recurrence interval of once in ten years as defined by the National Weather service and Technical Paper No. 40, "Rainfall Frequency Atlas of the U.S.," May 1961, or equivalent regional or rainfall probability information developed there from.

HH. The term "qualifying rainfall event" means the rainfall amounts as defined; active mine areas = 0.2"/24 hours, refuse areas = 2.5"/24 hours, controlled and commingled = 4.4"/24 hour.

II. The term "reclamation area" means the surface area of a coal mine which has been returned to required contour and on which revegetation (specifically seeding or planting) work has commenced. The term "pre-reclamation area" means the surface area of a coal mine prior to reclamation.

JJ. The term "settleable solids" is that matter measured by the volumetric method that is determined by the following procedure: (a) fill an imhoff cone to the one-liter mark with a thoroughly mixed sample. Allow to settle undisturbed for 45 minutes. Gently stir along the

inside surface of the cone with a stirring rod. Allow to settle undisturbed for 15 minutes longer. Record the volume of settled material in the cone as milliliters per liter. The method detection limit for coal mining point sources is 0.4 ml/l.

KK. The terms "treatment facility" and "treatment system" means all structures which contain, convey, and as necessary, physically or chemically treat coal mine drainage, coal preparation process water, surface runoff from disturbed areas, or drainage from coal preparation plant associated areas, which remove pollutants regulated by the Part from such waters. This includes all pipes, channels, ponds, basins, tanks, and all other equipment serving such structures.

LL. The terms "underground mine drainage or discharge" mean discharges from the underground workings of underground mines until SMCRA bond release.

MM. The "weekly average" discharge means the total concentration and mass of all daily discharges sampled and/or measured during a calendar week divided by the number of daily discharges sampled and/or measured during such week.

NN. The term "coal refuse disposal pile" means any coal refuse deposited on the earth and intended as permanent disposal or long term storage (greater than 180 days) of such material, but does not include coal refuse deposited within the active mining area or coal refuse never removed from the active mining area.

D. EVALUATION OF TMDL COMPLIANCE:

The Department will calculate mining waste load quarterly for each TMDL watershed.

Permittee will ensure that waste loads discharged from permit do not exceed mining waste load allocations set forth in the applicable TMDL for the watershed or any individual waste load allocation determined applicable by the Department for this permit and included herein.

Waste load for permit will be calculated from reported monitoring data according to the following formula for each monitoring record:

> Number of Days represented by sample X Flow (gpm) X Concentration (mg/L) X Conversion Factor (0.00545) = Kg loading of pollutant

The annual loading for the individual permit will be the summation of all calculated loadings from reported monitoring records associated with the permit for the previous four quarters of data.

For permits within the TMDL watershed that must adhere to aggregate mining waste loads, the waste load from the permit will be summed with mining waste loads from other permitted coal mining discharges within the TMDL watershed and the aggregate mining waste load will be compared to the mining waste load allocation of the approved TMDL report.

If the aggregated annual mining waste load exceeds the mining waste load allocation presented in the TMDL, then the permittee will adhere to the Department's mining waste load reduction actions for TMDL watersheds and any applicable offset.

Applicable Mining Waste Load Offsets

The Department will track approved offset balances for this permit utilizing the Department's TMDL Reporting System. If the permit is required to have a mining waste load offset in order to discharge, then the following requirements will also be applied.

1. Permit compliance will be determined by comparing the rolling annualized aggregate mining waste load to the offset limitations. The permit will not be allowed to exceed the mining waste load offset amount credited to this permit except as described below:
   a. Provided excess mining waste load is available when the aggregate watershed mining waste load is compared to the TMDL mining waste load allocation, the excess may be applied to the permitted waste load for that particular quarter.
   b. On the condition of the rolling annualized aggregate waste load exceeding the offset limitation, then the permittee may request that additional available offset credit be applied to the permit.
2. If no excess mining waste load is available and no existing offset credit is available, then the excess mining waste load amount from this permit must have an additional offset. The additional offset must be reviewed and approved by the Department.

There is no new offset required for this permit.

TMDL Reopener Clause

This permit is subject to a TMDL Reopener Clause as described in Part II Section D TMDL Special Conditions (a).